APPEAL NO. 161628
FILED OCTOBER 4, 2016

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on March 9, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. That hearing resulted in Appeals Panel Decision (APD) 160591, decided May 31, 2016, and was remanded to the hearing officer to add and resolve the issue of whether the impairment rating (IR) assessed by (Dr. J) became final pursuant to 28 TEX. ADMIN. CODE § 130.102(h) (Rule 130.102(h)) and to make a determination of IR. No further hearing was held. The hearing officer issued a Decision and Order on Remand which resolved the disputed issues by deciding that: (1) the first certification of maximum medical improvement (MMI) and assigned IR from the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor, Dr. J, on November 7, 2013, did not become final pursuant to Section 408.123 and Rule 130.12; and (2) the IR is 20%. The appellant (self-insured) appeals the hearing officer's determination of finality arguing the hearing officer's decision on remand never mentions the specific issue remanded by the Appeals Panel. The self-insured additionally, appeals the hearing officer's determination that the IR is 20%. The respondent (claimant) responded, urging affirmance of the disputed determinations.

DECISION

Affirmed as reformed.

It was undisputed that the claimant sustained a compensable injury and that the claimant reached MMI on September 4, 2013. As a result of the CCH held on March 9, 2016, the case was remanded to the hearing officer to add the issue of whether the IR assessed by Dr. J became final pursuant to Rule 130.102(h) because that issue was actually litigated.

FINALITY PURSUANT TO RULE 130.102(h)

In the decision on remand the hearing officer adds the finality issue of Dr. J's certification of MMI and IR but mistakenly analyzes the issue and makes a finality determination based on Rule 130.12 rather than 130.102(h). The self-insured correctly notes in its appeal the hearing officer's decision on remand never mentions the specific issue remanded by the Appeals Panel. Pursuant to Section 410.203(c) the Appeals Panel may not remand a case to a hearing officer more than once. Accordingly, based on the evidence in the record before us, we will resolve the finality issue based on Rule 130.102(h).

The evidence reflects that (Dr. P), a doctor selected by the treating doctor to act in his place, examined the claimant for purposes of MMI and IR on September 11, 2013. Dr. P certified that the claimant reached MMI on September 4, 2013, with a 20% IR using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). In evidence is a Request for Designated Doctor Examination (DWC-32) dated October 6, 2013, which requested the appointment of a designated doctor for the purpose of MMI and IR. On October 18, 2013, the Division approved the DWC-32 and appointed Dr. J as designated doctor for purposes of MMI and IR. On November 7, 2013, Dr. J examined the claimant and certified that the claimant reached MMI on September 4, 2013, with a 15% IR using the AMA Guides. In evidence are Applications for Supplemental Income Benefits [SIBs] (DWC-52) for the second, third, and fourth quarters whose qualifying periods are based on an IR of 15%. In the initial setting of the CCH, the parties stipulated that the claimant is not entitled to SIBs for the second, third, and fourth quarters.

Rule 130.102(h) provides that if there is no pending dispute regarding the date of MMI or the IR prior to the expiration of the first quarter SIBs, the date of MMI and IR shall be final and binding. The preamble to Rule 130.102(g) (Rule 130.102(g) was subsequently re-lettered as 130.102(h) with no change to its text) makes clear that "[t]his provision will not apply to any situation where a party has raised a dispute prior to the first quarter of [SIBs]." 24 Tex. Reg. 408 (1999). *See also* APD 031470, decided July 22, 2003 (affirming that the carrier did not waive its right to dispute the IR, where the carrier filed a dispute of the IR prior to the expiration of the first quarter of SIBs but later paid first and second quarter SIBs). The appointment of a designated doctor does not resolve a carrier's dispute of a claimant's IR by a referral doctor. *See* APD 061788, decided November 27, 2006. The appointment of Dr. J as the designated doctor did not resolve the self-insured's dispute of the claimant's IR assigned by Dr. P.

In the instant case, the claimant's IR was in dispute prior to the expiration of the first quarter of SIBs. Therefore, the 15% IR assigned by Dr. J, the designated doctor, did not become final and binding under Rule 130.102(h). We reform the hearing officer's determination to reflect the correct rule citation, 130.102(h). We affirm as reformed the hearing officer's determination that the certification of MMI and assigned IR from Dr. J on November 7, 2013, did not become final pursuant to Rule 130.102(h).

IR

The hearing officer's determination that the claimant's IR is 20% is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm as reformed the hearing officer's determination that the certification of MMI and assigned IR from Dr. J on November 7, 2013, did not become final pursuant to Rule 130.102(h).

We affirm the hearing officer's determination that the claimant's IR is 20%.

The true corporate name of the insurance carrier is **CITY OF AUSTIN (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

LESLIE MILVO
505 BARTON SPRINGS ROAD, SUITE 600
AUSTIN, TEXAS 78704.

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge